

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 20 May 2016

Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Educated Risk Investments 165 (Pty) Ltd v Ekurhuleni Metropolitan Municipality

The SCA today dismissed an appeal by the owners of a township in Springs against the refusal of an interdict aimed at stopping the Ekurhuleni Municipality allowing an adjacent property to be occupied as an informal settlement.

An informal settlement, known to its residents as Everest or Gugulethu, is situated in Payneville Extension 3 on the outskirts of the town of Springs. It is roughly triangular in shape and bounded on two sides by a mine dump and a slimes dam and on the third by a railway line and major road. It has no potable water supply, no refuse removal, no sewage reticulation system, no electricity and no tarred roads. The slimes dam gives off radon gas, a source of radiation, at levels that exceed acceptable norms and pose a threat to the health of the residents. It is one of 56 informal settlements in Gauteng that have been earmarked for urgent attention. It is the responsibility of the Ekurhuleni Metropolitan Municipality (Ekurhuleni), within whose area of jurisdiction the settlement falls, to find means of addressing these conditions.

Ekurhuleni proposes to allow some of the residents from Payneville Extension 3 to move to erven on a nearby township owned by it, called Payneville Extension 1. It has provided water and sewerage on that property but is not yet in a position to complete the development by providing roads, lighting and other facilities. Those who move to Payneville Extension 1 will be permitted to erect informal housing on the erven allocated to them but this will be temporary until the upgrading of the two townships occurs. The appellants, who own an adjacent township, complained that this was in conflict with the Town Planning Scheme in that informal housing was not permitted in a Residential 1 Zone, where it was only permissible to erect dwelling houses.

The SCA held that informal housing constituted dwelling houses both in its ordinary sense and as defined in the town planning scheme. It also held that the local authority was not obliged to comply with all the conditions of approval of the township or the sub-divisional conditions before permitting people to live there. Lastly it pointed out that the local authority was empowered to relax the use provisions of the scheme where in its opinion it was beneficial to the community or the area for it to do so. The appeal was dismissed with costs.